

From a timing standpoint, the prices are set quarterly and on a retroactive basis. After the end of each quarter, companies are given 4 weeks to send information about the previous quarter. Within 2 weeks the Board gives its preliminary evaluation in the form of a price band. After the band is issued, companies have 3 weeks to meet with the Board to give their views, and the Board issues its final norm price within 2 weeks thereafter.

For Federal gas (and if appropriate for other commodities), the Department of the Interior would establish a Pricing Board to determine prices similar to the process used by Norway. However, we would simplify the process wherever possible, such as eliminating the aspect of retroactive price adjustments.

Send comments on these two alternative methods to the address contained in the ADDRESSES section.

Dated: April 17, 1997.

Cynthia L. Quarterman,

Director, Minerals Management Service.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74, and 78

[ET Docket No. 95-18; FCC 97-93]

2 GHz for Use by the Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Further Notice of Proposed Rule Making (Further NPRM), we propose specific details of relocation of affected Broadcast Auxiliary Service (BAS), Cable Television Relay Service (CARS), Local Television Transmission Service (LTTS), and Fixed Satellite (FS) licensees, and request comment on our proposals. We propose to channelize the new BAS band into seven channels of 15 megahertz bandwidth, with the new channelization plan to become primary on January 1, 2000, or the day after the last Fixed Service (FS) licensee in the 2110-2130 MHz band has been relocated in accordance with Sections 101.69-101.81 of the Commission's rules, whichever date is later. We further propose to allow MSS operators to negotiate with BAS licensees for relocation. The new and enhanced services and uses permitted by this action will create new jobs, foster economic growth, and improve access to

communications by industry and the American public.

DATES: Comments must be submitted on or before June 23, 1997 and reply comments must be submitted on or before July 21, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, 202-418-2453.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making*, (Further NPRM), ET Docket 95-18, FCC 97-93, adopted March 13, 1997, and released March 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of the Further NPRM of Proposed Rule Making

1. In the Further NPRM of Proposed Rule Making ("Further NPRM"), the Commission proposes to rechannelize the new Broadcast Auxiliary Service (BAS) spectrum from the current seven channels (within the 1990-2110 MHz band), each of 17 or 18 megahertz bandwidth, to seven channels (at 2025-2130 MHz band), each of 15 megahertz bandwidth. The Further NPRM also proposes to provide for the relocation and rechannelization of incumbent BAS, Cable Television Relay Service (CARS), and Local Television Transmission Service (LTTS) licensees in accordance with the Commission's Emerging Technologies policies, providing for voluntary and mandatory negotiations between incumbent licensees and new MSS operators, and involuntary relocation of incumbents if agreements cannot be reached. The Further NPRM proposes that, in the case of involuntary relocation, all costs of relocation will be borne by the MSS licensee. The Further NPRM also proposes that the Emerging Technologies policies for the relocation of incumbent FS licensees (in the 2110-2130 and 2165-2200 MHz bands) be followed, including voluntary and mandatory negotiation periods, provision for involuntary relocation with all costs borne by the MSS operator, and a "sunset" date of ten years after the beginning of the voluntary negotiation period, after

which FS licensees will be required to relocate at their own expense if MSS needs the frequencies within which FS licensees operate.

2. The Commission carefully considered the balance of interests between new technology providers and incumbent service licensees, in the Emerging Technologies proceeding, ET Docket 92-9. Considering that the emerging technology service provider receives the benefits of operating in the band, including anticipated substantial profits, the Commission concluded that it is fair to require the new technology service to pay for the relocation of the displaced incumbents. Though the 1990-2110 MHz BAS band was not part of the Emerging Technologies proceeding, the logic of the Emerging Technologies proceeding applies equally well to BAS, CARS, and LTTS. MSS commenters advocate requiring BAS band licensees to finance their own relocation as their equipment depreciates and they purchase new equipment, claiming that the total costs of relocation, added to the high cost of launching satellites, would cripple the nascent MSS industry. This assertion, however, contradicts the position of MSS commenters that there is a huge, underserved demand for MSS. We believe that MSS licensees will build the cost of relocating BAS band licensees into their financial plans, and still will be able to provide service at a profit. We propose to rechannelize the BAS band to seven channels of 15 megahertz width each, as opposed to the current 17- and 18-megahertz channel widths, in order to maintain seven channels in the 2 GHz BAS band, but we also request comment on whether allowing flexibility in channelization would better serve the needs of the BAS, CARS, and LTTS industries. Because the current and new BAS bands overlap, BAS, CARS, and LTTS licensees are likely to interfere with each other if both the current and proposed new channel plans are used simultaneously. To address this problem, we propose to make the new channel plan primary on January 1, 2000, or after the 2110-2130 MHz band is cleared of incumbent FS licensees, whichever is later. We also inquire whether a later date would be more appropriate, and whether we should allow switchover on a market-by-market basis, rather than a nationwide basis. We inquire whether we should allow BAS, CARS, and LTTS licensees to negotiate with MSS individually, or whether we should impose marketwide or nationwide negotiators whose agreements would be binding on all licensees. We also

propose the same negotiation periods as those established in the Emerging Technologies proceeding: a two-year voluntary negotiation period, followed by a one-year mandatory negotiation period, followed by involuntary relocation. In the case of involuntary relocation, we propose to apply the requirements of our Emerging Technologies policies: (1) payment of all relocation expenses by the MSS operator, (2) full comparability of replacement facilities, and (3) the right of the incumbents to return to their original spectrum at MSS expense, should the replacement facilities prove not to be fully comparable within one year after relocation. Finally, we propose to require subsequently entering MSS operators to compensate earlier operators for a portion of the expenses incurred in clearing the BAS band.

3. We also propose to follow our Emerging Technologies policies in providing for the relocation of FS incumbents from the 2110–2130 MHz and 2165–2200 MHz bands, as codified at 47 CFR 101.69–101.81. Incumbents will be relocated from the 2110–2130 MHz band to clear that band for relocated BAS operations. In our Emerging Technologies proceeding, we established two periods for negotiation between new emerging technology licensees and incumbent FS licensees. The first period is for voluntary negotiations, in which the parties may arrive at any mutually agreeable solution. Negotiations during this period are strictly voluntary, and we established no parameters for these negotiations. The voluntary period begins with our acceptance of license applications for the emerging technology service, and lasts for two years, or, in the case of public safety FS, three years.¹ The voluntary period is followed by a mandatory negotiation period, which begins at any time after expiration of the voluntary period when the emerging technologies licensee informs the FS incumbent in writing of the emerging technology licensee's desire to negotiate relocation. During the mandatory period, the parties would be required to negotiate in good faith, but again the parameters of the negotiation are left to the parties. The mandatory period lasts for one year, or two years for public safety FS incumbents.² Should the parties fail to

reach an agreement during the mandatory negotiation period, the emerging technology provider would be able to request involuntary relocation of the existing facility. Involuntary relocation requires that the emerging technology provider (1) guarantee payment of all costs of relocating the incumbent to a comparable facility; (2) complete all activities necessary for placing the new facilities into operation, including engineering and frequency coordination; and (3) build and test the new FS or alternative system. Once comparable facilities are made available to the incumbent microwave operator, the Commission will amend the 2 GHz license of the incumbent to secondary status. After relocation, the FS incumbent is entitled to a one-year trial period to determine whether the facilities are indeed comparable, and if they are not, the emerging technologies licensee is required to remedy the defects or pay to relocate the FS incumbent back to its former or an equivalent 2 GHz frequency.³

4. We propose to provide for FS relocation in this case using the same sunset period and good faith guidelines as those established in the Microwave Cost-Sharing proceeding, 11 FCC Rcd 8825 (1996), 61 FR 29679, June 12, 1996. Ten years after the beginning of the voluntary negotiation period for the first MSS licensees, MSS operators would no longer be required to pay the costs of relocating FS incumbents, and would be able to require the incumbents to cease operating or relocate at their own expense upon six months written notice. The MSS and FS industries are currently developing interference standards under the good offices of Telecommunications Industry Association (TIA). We propose to adopt these standards, or their successors, in determining whether our sunset rules would apply to a given FS incumbent. At the end of the six-month notice period, the incumbent FS licensees would be required to surrender their 2 GHz licenses to the Commission, unless the incumbent FS licensees arrived at an agreement with the MSS operators to allow the incumbent FS licensee to continue operations. During mandatory negotiations, we propose to adhere to the guidelines enumerated in the Microwave Cost-Sharing proceeding. We request comment on whether we should apply the sunset rule of 47 CFR 101.81 and the good faith guidelines of 47 CFR 101.75 for the 2110–2130 MHz and 2165–2200 MHz bands. If so, we

inquire whether the sunset date should be ten years after the beginning of the voluntary negotiation period for relocation, as in 47 CFR 101.81, or some other date.

5. In the Microwave Cost-Sharing proceeding, we also proposed to adjust the voluntary and mandatory negotiation periods for FS relocation in the case of the D, E, and F spectrum blocks of PCS. Specifically, we proposed to reduce the voluntary period to one year, or two years in the case of public safety FS incumbents. We proposed to increase the mandatory negotiation period to two years, or three years in the case of public safety FS. Thus, the total negotiation period would remain the same, but the division into voluntary and mandatory periods would be altered. We request comment on whether we should adjust the negotiation periods for the MSS band. If so, should we follow the proposal in our Microwave Cost-Sharing proceeding, or should we establish some other negotiation periods? Also, should we begin the voluntary negotiation period when we accept applications for MSS licensing, or at some later date?

6. In addition to addressing FS in the 2110–2130 MHz and 2165–2200 MHz bands, we inquire into procedures for relocation of FS licensees in the 2130–2150 MHz band. This band is not directly reallocated by this proceeding, but FS links in the 2130–2150 MHz band are paired with links in the 2180–2200 MHz band, which is being reallocated to MSS. We propose to allow parties to negotiate the relocation of links in the 2130–2150 MHz band during negotiations for the relocation of FS licensees in the 2180–2200 MHz band. We inquire, however, whether we should assume that the involuntary relocation of FS links in the 2180–2200 MHz band necessitates relocation of the paired links in the 2130–2150 MHz band, or whether we should require relocation only of links in the 2180–2200 MHz band, leaving situate the paired links in the 2130–2150 MHz band, unless the FS licensees involved demonstrate the need to have the paired links in the 2130–2150 MHz band included in involuntary relocation. Commenters are urged to address the feasibility of paired links in widely separated frequency bands, as well as any other aspects of this question.

7. Finally, we propose to require subsequently entering MSS operators to compensate earlier MSS operators for the costs of relocating incumbent FS licensees. We propose that the subsequently entering MSS operators will pay a proportionate share of the costs of clearing the spectrum band that

¹ Public safety FS licensees eligible for the three-year voluntary negotiation period are defined in Emerging Technologies, ET Docket 92–9, Memorandum Opinion and Order, 9 FCC Rcd 1943 at ¶¶ 36–41, 59 FR 19642, April 25, 1994.

² See Emerging Technologies, ET Docket 92–9, Third Report and Order and Memorandum Opinion

and Order, 8 FCC Rcd. 6589 at ¶ 15, 58 FR 46547, September 2, 1993.

³ See 47 CFR 21.50, 94.59.

the subsequently entering MSS operator is authorized to use. Further, in any case where the earlier MSS operator was able to share spectrum with FS incumbents, but the entry of another MSS operator necessitates relocation, we propose to require the earlier MSS operator to compensate the subsequently entering MSS operator in the same manner. We also inquire, whether we should consider the age and value of FS equipment in determining costs issues in the case of involuntary relocation.

8. We request comment on all these proposals. Commenters are encouraged to present possible alternatives to any of the proposals presented in the Further NPRM. We also specifically inquire whether there are sound reasons to establish different relocation procedures for the BAS band than those we establish for FS relocation.

9. This action would make more spectrum available to MSS providers from the year 2000 forward. The staff has concluded that there is a need for more MSS spectrum, and the spectrum at issue will allow both domestic and global MSS systems to be established. The reduction of the BAS band would encourage more efficient use of the spectrum, and would increase the amount of remaining spectrum available for emerging technologies. The spectrum allocation would require relocation of BAS and FS licensees, in accordance with our Emerging Technologies rules. Finally, the new and enhanced services and uses permitted by this action will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

Initial Regulatory Flexibility Analysis

10. As required by Section 603 of the Regulatory Flexibility Act,⁴ the Commission has prepared an IRFA of the expected significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making (Further NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further NPRM provided above in paragraph 83. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

A. Need for and Objectives of the Proposed Rules

11. The Further NPRM proposes rules to govern the relocation of Broadcast Auxiliary Service (BAS), Local Television Transmission Service (LTTS), Cable Television Relay Service (CARS), and Fixed Service (FS) licensees from the 2 GHz spectrum reallocated to the MSS. These rules are designed to ensure an orderly transition of these licensees from the spectrum so that MSS operations may be conducted in the spectrum. At the same time, the rules are designed to ensure that incumbent BAS, LTTS, CARS, and FS licensees suffer no harm from relocation.

B. Legal Basis

12. The Communications Act of 1934, as amended, gives the Commission authority to "make such regulations as it may deem necessary to prevent interference between stations and to carry out the provisions of [the Communications Act]." 47 U.S.C. 303(f).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

13. BAS, LTTS, and CARS Licensees

This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). It also includes Instructional Television Fixed Service stations, which are used to relay programming to the home or office, similar to that provided by the cable television systems. The Commission has not developed a definition of small entities applicable to Broadcast Auxiliary Service, Local Television Transmission Service or Cable Television Relay Service. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. SBA has defined a small business for Standard Industrial Classification (SIC) category 4812 (Radiotelephone Communications) to be small entities when they have fewer than 1500 employees.⁵

(a) There are currently 2,663 FM translators and boosters, 4, 926 TV translators, and 1,921 Low Power TV stations which will be affected by the new requirements. The FCC does not collect financial information on any broadcast facility and the Department of

Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). As we indicated earlier, 96% of radio stations and 78% of TV stations are designated as small businesses.

(b) There are currently 2,000 licensed cable television relay stations, which will probably be affected by the new requirement. The Commission receives approximately 1,000 CARS applications on an annual basis. The FCC is not required to collect financial information on these facilities.

14. Fixed Service Licensees

The Further NPRM pertains to fixed service microwave licensees. The Commission has not developed a definition of small entities applicable to Fixed Service microwave licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Census Bureau data indicates that there are 1,164 radiotelephone companies with fewer than 1500 employees, that might qualify as small entities if they are independently owned and operated. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that would be affected by this action.

15. Satellite Communications Services

The Commission has not developed a definition of small entities applicable to satellite communications licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services "Not Elsewhere Classified." This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁶ According to Census Bureau data, there are 848 firms

⁴ 5 U.S.C. 603.

⁵ 13 CFR 121.201 Standard Industrial Classification (SIC) Code 4812.

⁶ 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of \$11 million or less and qualify as small entities.⁷

16. Satellite systems authorized by the Commission can be divided into the following categories: Mobile-Satellite Service (MSS) non-geostationary satellite orbit (LEO) (low or medium orbit satellites); MSS geostationary; MSS stations; and Fixed-Satellite Service.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. The proposed rules would require all BAS, LTTS, CARS, and FS licensees, as well as MSS operators, to negotiate for relocation or rechannelization or both, including negotiating timetables and costs. These negotiations are likely to require the skills of accountants and engineers to evaluate the economic and technical requirements of relocation.

E. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

18. The Commission considered the alternative of requiring current BAS, LTTS, CARS, and FS licensees in the 2 GHz band to relocate or rechannelize or both at their own expense. The Commission rejected this alternative as excessively burdensome on these incumbent licensees, and not in the public interest.

19. MSS commenters advocate requiring BAS band licensees to finance their own relocation as their equipment depreciates and they purchase new equipment, claiming that the total costs of relocation, added to the high cost of launching satellites, would cripple the nascent MSS industry. This assertion, however, contradicts the position of MSS commenters that there is a huge, underserved demand for MSS. We believe that MSS licensees will build the cost of relocating BAS band licensees into their financial plans, and still will be able to provide service at a profit. We propose to rechannelize the BAS band to seven channels of 15 megahertz width each, as opposed to the current 17- and 18-megahertz channel widths, in order to maintain seven channels in the 2 GHz BAS band, but we also request comment on whether allowing flexibility in channelization would better serve the needs of the BAS, CARS, and LTTS industries. Because the current and new BAS bands overlap, BAS, CARS, and LTTS licensees are likely to interfere with each other if both the current and proposed new channel plans are used simultaneously. To address this problem, we would propose to make the new channel plan primary on January 1, 2000, or after the 2110–2130 MHz band is cleared of incumbent FS licensees, whichever is later. We would also inquire whether a later date would be more appropriate, and whether we may allow switchover on a market-by-market basis, rather than a nationwide basis. We inquire whether we should allow BAS, CARS, and LTTS licensees to negotiate with MSS individually, or whether we should impose marketwide or nationwide negotiators whose agreements would be

binding on all licensees. We propose the same negotiation periods as those established in the Emerging Technologies proceeding: a two-year voluntary negotiation period, followed by a one-year mandatory negotiation period, followed by involuntary relocation. In the case of involuntary relocation, we propose to apply the requirements of our Emerging Technologies policies: (1) payment of all relocation expenses by the MSS operator, (2) full comparability of replacement facilities, and (3) the right of the incumbents to return to their original spectrum at MSS expense, should the replacement facilities prove not to be fully comparable within one year after relocation. Finally, we would propose to require subsequently entering MSS operators to compensate earlier operators for a portion of the expenses incurred in clearing the BAS band.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

20. None.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 74

Television broadcasting.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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⁷ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).